

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Brad J. Kratky,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 127

Decision and Order Affirming the  
Determination of the Douglas  
County Board of Equalization

**GENERAL BACKGROUND AND PROCEDURAL HISTORY**

1. The Subject Property (herein referred to as the “Subject Property”) is a residential parcel located at 19355 Woolworth Avenue, Omaha, Nebraska, with a legal description of: PACIFIC POINTE REP 2 LOT 7 BLOCK 0.<sup>1</sup>
2. The Douglas County Assessor assessed the Subject Property at \$457,500 for tax year 2012.<sup>2</sup>
3. Brad J. Kratky (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).<sup>3</sup>
4. The County Board determined that the assessed value of the Subject Property was \$457,500 for tax year 2012.<sup>4</sup>
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on August 28, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. Brad J. Kratky was present at the hearing.
8. Kevin Corcoran and Brian Grimm, assessors with the Douglas County Assessor’s Office, were present for the County Board.

**STANDARD OF REVIEW**

9. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>5</sup> “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not

<sup>1</sup> See, Assessment Report, pg. 2.

<sup>2</sup> See, Case File.

<sup>3</sup> See, Case File.

<sup>4</sup> See, Case File.

<sup>5</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”<sup>6</sup>

10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>7</sup> That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>8</sup>
11. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>9</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</sup>
13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>11</sup>

#### **SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

1. The Taxpayer provided the Commission with documentation regarding seven properties that he asserted were comparable to the Subject Property. This documentation includes screenshots from the County Assessor’s website and listing service information.
2. The Taxpayer asserted that these documents indicated that the Subject Property was not equalized with similar properties, and that the assessed value exceeded the Subject Property’s actual value.
3. The County Board provided the Commission with an Assessment Report which contains the Property Record Files for the Subject Property and three alleged comparable properties.<sup>12</sup>
4. The County Assessor valued the Subject Property using a cost approach.<sup>13</sup>

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<sup>6</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>7</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>10</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>11</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>12</sup> See, Assessment Report.

<sup>13</sup> See, Assessment Report, pg. 11.

## GENERAL EQUALIZATION LAW

5. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>14</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>15</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>16</sup>
6. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.<sup>17</sup>
7. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>18</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>19</sup>
8. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>20</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>21</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>22</sup>
9. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>23</sup>

## EQUALIZATION ANALYSIS

10. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>24</sup> or (2) a comparison of

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<sup>14</sup> *Neb. Const.*, Art. VIII, §1.

<sup>15</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>16</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>17</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>18</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>19</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>20</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>21</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>22</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>23</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.<sup>25</sup>

11. The seven properties that the Taxpayer submitted for consideration have significantly different characteristics as compared to the Subject Property. These differences are as follows: (1) Comparable 1 has a lower quality rating which would affect the contributing value of all components of the Subject Property;<sup>26</sup> (2) Comparable 2 has a lower condition rating which would result in higher obsolescence attributable to the Subject Property;<sup>27</sup> (3) Comparable 3 is smaller, has more baths and bedrooms and a smaller basement;<sup>28</sup> (4) Comparable 4 contains an additional bathrooms which may affect the functional obsolescence associate with it;<sup>29</sup> (5) Comparable 5 has a different roofline than the Subject Property;<sup>30</sup> (6) Comparable 6 has a lower condition rating which would increase the amount of attributable obsolescence;<sup>31</sup> and (7) Comparable 7 is larger, has a lower quality and is older than the Subject Property.<sup>32</sup>
12. The Commission finds that the Taxpayer's alleged comparable properties are not truly comparable for these reasons. The Commission further finds that a comparison of the per square foot values of the Subject Property and the alleged comparable properties is not relevant to a determination of the equalization of the properties, because the properties are not substantially similar.
13. The Commission also notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

**NOTE:** *Copies of the County's Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

14. In part because Property Record Files were not submitted by the Taxpayer for the seven parcels submitted for consideration, together with a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer's assertions that the Subject Property was not equalized with other real property does not constitute clear and convincing evidence that the County Board's determination

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<sup>24</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>25</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>26</sup> See, County Assessor Screenshot Comparable 1.

<sup>27</sup> See, County Assessor Screenshot Comparable 2.

<sup>28</sup> See, County Assessor Screenshot Comparable 3.

<sup>29</sup> See, CBS Home Listing Comparable 4.

<sup>30</sup> See, County Assessor Screenshot Comparable 5.

<sup>31</sup> See, County Assessor Screenshot Comparable 6.

<sup>32</sup> See, County Assessor Screenshot Comparable 7.

for tax year 2012 was arbitrary or unreasonable, or that the assessed value of the Subject Property was grossly excessive.

**CONCLUSION**

- 15. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
- 16. The Taxpayer has not produced clear and convincing evidence that the Subject Property's assessed value when compared with similar properties is grossly excessive and is the result of systematic will or failure of a plain legal duty.
- 17. The Taxpayer not has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**ORDER**

IT IS ORDERED THAT:

- 1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.
- 2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$60,000
<u>Improvements</u>	<u>\$397,500</u>
Total	\$457,500

- 3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
- 4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
- 5. Each Party is to bear its own costs in this proceeding.
- 6. This Decision and Order shall only be applicable to tax year 2012.
- 7. This Decision and Order is effective on July 23, 2014.

Signed and Sealed: July 23, 2014

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Thomas D. Freimuth, Commissioner